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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

DOMINGO LOPEZ
1236 S. Arizona Ave
Los Angeles, Calif. 90022
Respiratory Care Practitioner No. 24281

Respondent.

Case No. 2004 212

OAH No. L2008030915

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Respiratory Care Board of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Petition to Revoke Probation.

PARTIES

1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory Care Board of California. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Richard D. Marino, Deputy Attorney General.

2. Respondent Domingo Lopez (Respondent) is represented in this proceeding by attorney Kenneth J. Richard, whose address is 30211 Avenue de las Banderas,

1 Suite 200, Rancho Santa Margarita, California 92688.

2 . 3. On or about May 11, 2005, the Respiratory Care Board of California
3 issued Respiratory Care Practitioner No. 24281 to Domingo Lopez (Respondent) subject to
4 probation for a term of three years with terms and conditions including, but not limited,
5 biological fluid testing and random drug and alcohol testing.. The Respiratory Care Practitioner
6 was in full force and effect at all times relevant to the charges brought in Accusation and Petition
7 to Revoke Probation No. D1 2004 212 and will expire on May 31, 2008, unless renewed.

8 **JURISDICTION**

9 4. Accusation and Petition to Revoke Probation No. D1 2004 212 was filed
10 before the Respiratory Care Board (Board) , Department of Consumer Affairs, and is currently
11 pending against Respondent. The Petition to Revoke Probation and all other statutorily required
12 documents were properly served on Respondent on January 18, 2008. Respondent timely filed
13 his Notice of Defense. A copy of Accusation and Petition to Revoke Probation No. D1 2004 212
14 is attached as Exhibit A and incorporated herein by reference.

15 **ADVISEMENT AND WAIVERS**

16 5. Respondent has carefully read, fully discussed with counsel, and
17 understands the charges and allegations in Accusation and Petition to Revoke Probation No. D1
18 2004 212. Respondent has also carefully read, fully discussed with counsel, and understands the
19 effects of this Stipulated Settlement and Disciplinary Order.

20 6. Respondent is fully aware of his legal rights in this matter, including the
21 right to a hearing on the charges and allegations in the Petition to Revoke Probation; the right to
22 be represented by counsel at his own expense; the right to confront and cross-examine the
23 witnesses against him; the right to present evidence and to testify on his own behalf; the right to
24 the issuance of subpoenas to compel the attendance of witnesses and the production of
25 documents; the right to reconsideration and court review of an adverse decision; and all other
26 rights accorded by the California Administrative Procedure Act and other applicable laws.

27 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
28 each and every right set forth above.

1 **CULPABILITY**

2 8. Respondent understands and agrees that the charges and allegations in
3 Accusation and Petition to Revoke Probation No. D1 2004 212, if proven at a hearing, constitute
4 cause for imposing discipline upon his Respiratory Care Practitioner.

5 9. For the purpose of resolving the Petition to Revoke Probation without the
6 expense and uncertainty of further proceedings, Respondent agrees that, at a hearing,
7 Complainant could establish a factual basis for the charges in the Accusation and Petition to
8 Revoke Probation, and that Respondent hereby gives up his right to contest those charges.

9 10. Respondent agrees that his Respiratory Care Practitioner is subject to
10 discipline and he agrees to be bound by the Respiratory Care Board (Board) 's imposition of
11 discipline as set forth in the Disciplinary Order below.

12 **CONTINGENCY**

13 11. This stipulation shall be subject to approval by the Respiratory Care
14 Board. Respondent understands and agrees that counsel for Complainant and the staff of the
15 Respiratory Care Board of California may communicate directly with the Board regarding this
16 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
17 signing the stipulation, Respondent understands and agrees that he may not withdraw his
18 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon
19 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
20 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
21 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
22 further action by having considered this matter.

23 12. The parties understand and agree that facsimile copies of this Stipulated
24 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
25 force and effect as the originals.

26 13. In consideration of the foregoing admissions and stipulations, the parties
27 agree that the Board may, without further notice or formal proceeding, issue and enter the
28 following Disciplinary Order:

1 **DISCIPLINARY ORDER**

2 **IT IS HEREBY ORDERED** that Respiratory Care Practitioner No. 24281 issued
3 to Respondent Domingo Lopez (Respondent) is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for three (3) years on the following terms and conditions.

5 1. **WORK SCHEDULES** Respondent shall be required to submit to the
6 probation monitor work schedules on a weekly/monthly basis for the length of probation.
7 Respondent shall ensure the Board has a copy of his current work schedule at all times for each
8 place of employment.

9 Failure to submit current work schedules on a continuous basis shall constitute a
10 violation of probation and shall result in the filing of an accusation and/or a petition to revoke
11 probation against Respondent's respiratory care practitioner license.

12 2. **BIOLOGICAL FLUID TESTING** Respondent, at his expense, shall
13 participate in random testing, including, but not limited to, biological fluid testing (i.e. urine,
14 blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the
15 Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire
16 probation period. The frequency and location of testing will be determined by the Board.

17 At all times, Respondent shall fully cooperate with the Board or any of its
18 representatives, and shall, when directed, appear for testing as requested and submit to such tests
19 and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other
20 controlled substances.

21 If Respondent is unable to provide a specimen in a reasonable amount of time
22 from the request, while at the work site, Respondent understands that any Board representative
23 may request from the supervisor, manager or director on duty to observe Respondent in a manner
24 that does not interrupt or jeopardize patient care in any manner until such time Respondent
25 provides a specimen acceptable to the Board.

26 Failure to submit to testing or appear as requested by any Board representative for
27 testing, as directed shall constitute a violation of probation and shall result in the filing of an
28 accusation and/or a petition to revoke probation against Respondent's respiratory care

practitioner license.

3. ABSTENTION FROM USE OF ANY AND ALL MOOD ALTERING SUBSTANCES Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs, and any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professionals as requested by the Board.

Respondent shall ensure that he is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s).

Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.

4. ABSTENTION FROM USE OF ANY HEMP BASED PRODUCT Respondent shall completely abstain from the possession or use of any hemp based product.

5. RESTRICTION OF PRACTICE Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions.

6. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st

1 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
2 the period covering July 1st through September 30th, reports are to be completed and submitted
3 between October 1st and October 7th. For the period covering October 1st through December 31st,
4 reports are to be completed and submitted between January 1st and January 7th.

5 Respondent is ultimately responsible for ensuring his employer(s) submits
6 complete and timely reports. Failure to ensure each employer submits complete and timely
7 reports shall constitute a violation of probation.

8 7. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
9 state, or local. Respondent shall also obey all regulations governing the practice of respiratory
10 care in California.

11 Respondent shall notify the Board in writing within 14 days of any incident
12 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

13 8. QUARTERLY REPORTS Respondent shall file quarterly reports of
14 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned
15 by the Board. Omission or falsification in any manner of any information on these reports shall
16 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
17 to revoke probation against Respondent's respiratory care practitioner license.

18 Quarterly report forms will be provided by the Board. Respondent is responsible
19 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each
20 year of probation and the entire length of probation as follows:

21 For the period covering January 1st through March 31st, reports are to be
22 completed and submitted between April 1st and April 7th. For the period covering April 1st
23 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
24 the period covering July 1st through September 30th, reports are to be completed and submitted
25 between October 1st and October 7th. For the period covering October 1st through December 31st,
26 reports are to be completed and submitted between January 1st and January 7th.

27 Failure to submit complete and timely reports shall constitute a violation of
28 probation.

1 9. PROBATION MONITORING PROGRAM Respondent shall comply
2 with requirements of the Board appointed probation monitoring program, and shall, upon
3 reasonable request, report to or appear to a local venue as directed.

4 Respondent shall claim all certified mail issued by the Board, respond to all
5 notices of reasonable requests timely, and submit Annual Reports, Identification Update reports
6 or other reports similar in nature, as requested and directed by the Board or its representative.

7 Respondent is encouraged to contact the Board's Probation Program at any time
8 he has a question or concern regarding his terms and conditions of probation.

9 Failure to appear for any scheduled meeting or examination, or cooperate with the
10 requirements of the program, including timely submission of requested information, shall
11 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
12 revoke probation against Respondent's respiratory care practitioner license.

13 10. PROBATION MONITORING COSTS All costs incurred for probation
14 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may
15 be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms
16 and conditions may also cause this amount to be increased.

17 All payments for costs are to be sent directly to the Respiratory Care Board and
18 must be received by the date(s) specified. (Periods of tolling will not toll the probation
19 monitoring costs incurred.)

20 If Respondent is unable to submit costs for any month, he shall be required instead
21 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able
22 to submit the costs including payment amount(s). Supporting documentation and evidence of
23 why the Respondent is unable to make such payment(s) must accompany this submission.

24 Respondent understands that failure to submit costs timely is a violation of
25 probation and submission of evidence demonstrating financial hardship does not preclude the
26 Board from pursuing further disciplinary action. However, Respondent understands providing
27 evidence and supporting documentation of financial hardship may delay further disciplinary
28 action.

1 In addition to any other disciplinary action taken by the Board, an unrestricted
2 license will not be issued at the end of the probationary period and the respiratory care
3 practitioner license will not be renewed, until such time all probation monitoring costs have been
4 paid.

5 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
6 responsibility to reimburse the Board for costs incurred.

7 11. EMPLOYMENT REQUIREMENT Respondent shall be employed a
8 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his
9 probation period.

10 Respondent may substitute successful completion of a minimum of thirty (30)
11 additional continuing education hours, beyond that which is required for license renewal, for
12 each 8 months of employment required. Respondent shall submit proof to the Board of
13 successful completion of all continuing education requirements. Respondent is responsible for
14 paying all costs associated with fulfilling this term and condition of probation.

15 12. NOTICE TO EMPLOYER Respondent shall be required to inform his
16 employer, and each subsequent employer during the probation period, of the discipline imposed
17 by this decision by providing his supervisor and director and all subsequent supervisors and
18 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in
19 this matter prior to the beginning of or returning to employment or within 14 days from each
20 change in a supervisor or director.

21 If Respondent is employed by or through a registry [and is not restricted from
22 working for a registry], Respondent shall make each hospital or establishment to which he is sent
23 aware of the discipline imposed by this decision by providing his direct supervisor and
24 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)
25 of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be
26 done each time there is a change in supervisors or administrators.

27 The employer will then inform the Board, in writing, that he is aware of the
28 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting

1 the Board to obtain additional forms, if needed. All reports completed by the employer must be
2 submitted from the employer directly to the Board.

3 Respondent shall execute a release authorizing the Board or any of its
4 representatives to review and obtain copies of all employment records and discuss and inquire of
5 the probationary status with any of Respondent's supervisors or directors.

6 13. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall
7 notify the Board, and appointed probation monitor, in writing, of any and all changes of
8 employment, location, and address within 14 days of such change. This includes, but is not
9 limited to, applying for employment, termination or resignation from employment, change in
10 employment status, change in supervisors, administrators or directors.

11 Respondent shall also notify his probation monitor AND the Board IN WRITING
12 of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for
13 mailing purposes, however the Respondent must also provide his physical residence address as
14 well.

15 14. SURRENDER OF LICENSE Following the effective date of this
16 decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable
17 to satisfy the terms and conditions of probation, he may request the voluntary surrender of his
18 license. The Board reserves the right to evaluate Respondent's request and to exercise its
19 discretion whether or not to grant the request or to take any other action deemed appropriate and
20 reasonable under the circumstances. Upon formal acceptance of the surrender, within 15
21 calendar days Respondent shall deliver his wallet and wall certificate to the Board or its designee
22 and he shall no longer practice respiratory care. Respondent will no longer be subject to the
23 terms and conditions of probation and the surrender of Respondent's license shall be deemed
24 disciplinary action. If Respondent re-applies for a respiratory care license, the application shall
25 be treated as a petition for reinstatement of a revoked license.

26 15. COST RECOVERY Respondent shall pay to the Board a sum not to
27 exceed the costs of the investigation and prosecution of this case. That sum shall be \$ 2,291 and
28 shall be paid in full directly to the Board, in eight (8) equal quarterly payments (\$286.38), within

24 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for these costs.

16. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period, but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

17. VALID LICENSE STATUS Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet Continuing Education requirements prior to his license expiration date shall constitute a violation of probation.

18. VIOLATION OF PROBATION If Respondent violates any term of the

1 probation in any respect, the Board, after giving Respondent notice and the opportunity to be
2 heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to
3 revoke probation is filed against Respondent during probation, the Board shall have continuing
4 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
5 modification of penalty shall be considered while there is an accusation or petition to revoke
6 probation or other penalty pending against Respondent.

7 19. COMPLETION OF PROBATION Upon successful completion of
8 probation, Respondent's license shall be fully restored.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Kenneth J. Richard. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

DATED: June 18, 2008.

Original signed by: _____
DOMINGO LOPEZ (Respondent)
Respondent

I have read and fully discussed with Respondent Domingo Lopez the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: June 18, 2008.

Original signed by: _____
KENNETH J. RICHARD
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

DATED: August 19, 2008

EDMUND G. BROWN JR., Attorney General
of the State of California

PAUL C. AMENT
Supervising Deputy Attorney General

Original signed by: _____
RICHARD D. MARINO
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2007503119
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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

DOMINGO LOPEZ
1236 S. Arizona Ave
Los Angeles, Calif. 90022
Respiratory Care Practitioner No. 24281

Respondent.

Case No. D1 2004 212

OAH No. L2008030915

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by
the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 6, 2008.

It is so ORDERED September 26, 2008.

Original signed by: _____
LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA